

AGREEMENT ON THE ALLOCATION OF THE PUYALLUP RIVER TMDL RESERVE CAPACITY OF BIOCHEMICAL OXYGEN DEMAND (BOD5) AND AMMONIA

I. PARTIES

This Agreement is entered into on the ____ day of (month, year) by and between the Mediation Sponsors: WASHINGTON STATE DEPARTMENT OF ECOLOGY ("Ecology"), the US ENVIRONMENTAL PROTECTION AGENCY ("EPA"), the PUYALLUP TRIBE OF INDIANS ("PUYALLUP TRIBE"), and the following Parties: WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE ("FISH AND WILDLIFE"), THE WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES ("DSHS"), the MUCKLESHOOT INDIAN TRIBE ("MUCKLESHOOT TRIBE"), PIERCE COUNTY, the CITY OF ENUMCLAW ("ENUMCLAW"), the CITY OF PUYALLUP ("PUYALLUP"), the CITY OF SUMNER ("SUMNER"), the CITY OF TACOMA ("TACOMA"), the CITY OF BONNEY LAKE ("BONNEY LAKE"), the CITY OF BUCKLEY ("BUCKLEY"); the TOWN OF SOUTH PRAIRIE ("SOUTH PRAIRIE"), the CITY OF ORTING ("ORTING"); the Town of WILKESON ("WILKESON"), the Town of Carbonado ("CARBONADO"), BEATRICE CHEESE CO. ("BEATRICE"); MATSUSHITA SEMICONDUCTOR ("MASCA "); SONOCO PRODUCTS CO. ("SONOCO"); CITIZENS FOR A HEALTHY BAY (CHB); and TROUT UNLIMITED. The Parties above are collectively known as the Mediation Parties.*

II. RECITALS

1. The Puyallup River watershed occupies approximately 970 square miles in the Puget Sound lowlands of Washington State. The Puyallup River Watershed drains much of Mt. Rainier and extends to Puget Sound. The major streams of the watershed are the Puyallup River and its two largest tributaries, the White and Carbon Rivers. The majority of the watershed lies within Pierce County; however, segments are also located in southern King County.

2. Ecology prepared a Puyallup River Total Maximum Daily Load ("the TMDL") for Biochemical Oxygen Demand ("BOD5") and ammonia. The maximum load for BOD5 was set at 20,322 lbs./day; the load for ammonia was set at 3,350 lbs./day. This included a Reserve capacity of 3,670 lbs./day of BOD5 and 1,200 lbs./day of ammonia in the Puyallup River Basin. The EPA approved the TMDL in 1994.

* The King-Pierce Cattlemen's Association, the King-Pierce County Farm Bureau, Champion Pacific Timberlands Inc., Weyerhaeuser, and Puget Sound Energy attended meetings and participated in the mediation process. However, they have chosen not to be signatories to the Agreement so are not included in the list of the Parties.

Sections of the TMDL are attached as Exhibit 4. The 1994 TMDL for the Puyallup River watershed identified waste load allocations for currently-permitted dischargers (10 municipalities and 4 industries), for hatcheries, and for expected growth -- the "Reserve;" it also identified a load allocation for background/nonpoint pollution.

3. The TMDL indicated Ecology could increase existing NPDES permit limits for BOD5 and ammonia by 67% without violating water quality standards, provided the permittees met mixing zone requirements and ammonia loading did not increase in the White River above river mile 3.6.

4. The Puyallup River TMDL, prepared by Ecology, represents the sum of all permitted NPDES waste load allocations plus conservative assumptions for nonpoint and natural background loadings, as well as a Reserve for future growth and water quality protection. The TMDL used a 7-day, 20-year low river flow design condition for the period May through October to build a safety margin into the analysis. See Exhibit 4.

5. After EPA approval of the TMDL in 1994, Ecology began receiving requests from current dischargers for a portion of the Reserve capacity. Ecology initiated a mediation process to resolve potential disputes regarding allocation of the Reserve and to establish a process for managing the Reserve capacity while simultaneously protecting water quality. The Puyallup Tribe, which has been delegated authority by the EPA under the Clean Water Act to adopt standards for water quality in the Puyallup River within the Puyallup Tribe Reservation, and the EPA, which has oversight responsibilities for water quality standards, TMDLs, and NPDES permits, agreed to jointly sponsor the mediation with Ecology.

6. The White River flows through the Muckleshoot Tribe's reservation lands and the Puyallup River flows through the Puyallup Tribe's reservation lands. Both of these Tribes have recognized and substantial treaty fishing and economic development rights in the Puyallup River watershed. However, because neither Tribe had NPDES permitted facilities when the 1994 TMDL was prepared, neither Tribe received a waste load allocation in the TMDL except for existing tribal hatcheries. As a result of tribal participation in the mediation process, the treaty rights of the Muckleshoot Tribe and of the Puyallup Tribe were acknowledged and considered by the Mediation Sponsors and Mediation Participants.

7. Ecology, the EPA, and the Puyallup Tribe - the Mediation Sponsors -- signed a Memorandum of Understanding in January 1997, affirming their intention to coordinate water quality efforts and to work cooperatively on water quality issues in the Puyallup River basin. A copy of the Memorandum of Understanding is attached as Exhibit 7. The joint sponsorship of the Mediation by these three Parties is a result of that Memorandum of Understanding.

8. The Mediation Sponsors sought agreement from Mediation Participants on an allocation of the TMDL Reserve and its future management, which would protect water quality standards. Mediation Participants included governments, municipal and industrial permitted dischargers, and a variety of representatives from the environmental community, agriculture, timber, and the hydro-power industry in the watershed.*

9. The mediator, Triangle Associates, Inc., worked with the Parties to draft a charter for the Mediation process. The Mediation Participants approved the charter by consensus at their November 6, 1996 meeting.

10. The Mediation Participants agreed to develop an understanding about the process used to develop the 1994 TMDL; to determine if the Reserve existed and if it could be allocated consistent with maintaining beneficial uses; to develop principles to guide waste load allocations in the future; to define methods to translate TMDL limits into NPDES permit limits; and to frame a process for developing NPDES permits and other controls which protect water quality, consistent with federal, tribal, and state regulations managing growth.

11. The Mediation Participants developed a process for allocation of and access to the Reserve to: (a) ensure present and predictable future uses of the Puyallup River for the public; (b) integrate growth management and NPDES permitting processes; (c) provide a fair, equitable, predictable and flexible

* As noted above, the Parties are those who signed the Agreement; the Participants includes the Parties as well as the entities who attended meetings and participated in the mediation process but did not sign the Agreement.

process, while meeting regulatory requirements; and (d) satisfy applicable State and Tribal antidegradation procedures.

12. During the course of the mediation, the Mediation Participants determined that the Reserve identified in the 1994 TMDL existed and could be allocated consistent with maintaining beneficial uses in the River. The Parties agreed that future allocations of the Reserve should be set aside for tribes, for municipalities including unincorporated urban growth areas within Pierce County and industry, for discharges into the Puyallup River system, and for a water quality buffer. They developed a process by which the identified entities could access their allocated portions of the Reserve in the future and agreed that a monitoring and an effluent trading demonstration project in the Puyallup River basin should be designed and implemented.

13. The TMDL indicates no Reserve capacity for ammonia in the White River above river mile 3.6. The ammonia water quality standard decreases with increasing temperature and/or pH. The White River occasionally exceeds the state surface water quality standard as a result of seasonal high pH values. Ecology is developing a nutrient/pH TMDL to address pH levels in the White River by decreasing nutrient loads.

14. The Washington State Legislature enacted the Growth Management Act which requires local governments, except tribes, to plan and provide utility service for future growth, including utility service, within identified Urban Growth Areas according to population and employment projections provided by the Washington State Office of Financial Management. The Washington State Office of Financial Management projects significant growth in the Puyallup River basin region.

15. The ten existing municipal sewage treatment facilities are at or nearing capacity. There is no assurance that they will be able to handle growth management projections without costly expansion. They will be facing increasing the cost of sewage treatment for many residents if they are unable to develop additional funding sources.

16. Allocating a portion of the TMDL Reserve to municipal discharge permittees could provide those municipalities with additional time and better enable them to plan and build treatment facilities

necessary to respond to population and employment growth projected by growth management plans within urban growth areas.

17. After the currently identified TMDL Reserve has been used, the existing TMDL does not allow for additional BOD5 or ammonia discharge into the Puyallup River basin without load reduction elsewhere. At that point, future population and industrial demands for increased sewage capacity, direct industrial discharges or other discharges to the river may only be satisfied by improved treatment, reduction of other loads or through effluent trading.

18. Industry in the Puyallup River basin provides employment and other economic benefits to the basin, and there is a need to plan for industrial growth beyond what may be available through use of existing municipal wastewater treatment plants.

19. The TMDL attributes almost half of the load for BOD5 and 36% of the load for ammonia to background and nonpoint pollution. Given the anticipated growth in the basin, the Mediation Participants recognize and acknowledge the importance of addressing background/nonpoint pollution.

20. Mediation Parties agree to sponsor a public workshop on the Agreement so interested citizens can learn about its provisions and comment before the Agreement is finalized.

III. AGREEMENT

NOW THEREFORE the Parties agree as follows:

A. ALLOCATION OF THE RESERVE

1. Reserve Allocations. The 1994 TMDL identified a Reserve capacity of 3,670 lb. of BOD5 and 1,200 lb. of ammonia in the Puyallup River Basin, which shall be allocated in the months of May through October, inclusive, in the following manner:

Category	ReserveBOD5 allocation: % & lb. per day	Reserve/Ammonia allocation, % & lb. per day
Muckleshoot Tribe	20% <i>734 lb./day</i>	20% <i>240 lb./day</i>
Puyallup Tribe	20% <i>734 lb./day</i>	20% <i>240 lb./day</i>
Municipalities	50% <i>1,835 lb./day</i>	50% <i>600 lb./day</i>
Industry	5% <i>183.5 lb./day</i>	5% <i>60 lb./day</i>
Water Quality Set Aside/Buffer	5% <i>183 lb./day</i>	5% <i>60 lb./day</i>
Hatcheries	0%	0%
Background/non- point/stormwater	0%	0%
Totals	100% <i>3,670 lb./day</i>	100% <i>1,200 lb./day</i>

2. White River Limitations. Buckley, Enumclaw, and the Muckleshoot Tribe shall postpone use of the ammonia Reserve allocations set forth in paragraph III.A.1 and III.A.4, above river mile 3.6 of the White River until after completion of the nutrient/pH TMDL being prepared by Ecology; provided, however, that the ammonia Reserve allocation may be used if it is converted to a BOD5 discharge and provided, further, that the ammonia Reserve allocation may be used in the anticipated effluent trading program provided it is not discharged above river mile 3.6 of the White River. After the nutrient/pH TMDL is completed and approved, Buckley, Enumclaw and the Muckleshoot Tribe shall meet with the

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Entity	Reserve BOD5 lbs./day	Reserve Ammonia lbs./day	Total Reserve Converted to BOD5 lbs./day
Bonney Lake ¹	<i>176 lbs./day</i>	<i>57.9 lbs./day</i>	<i>952 lbs./day</i>
Buckley	<i>105 lbs./day</i>	<i>34.6 lbs./day</i>	<i>569 lbs./day</i>
Carbonado	<i>5 lbs./day</i>	<i>1.6 lbs./day</i>	<i>27 lbs./day</i>
Enumclaw	<i>247 lbs./day</i>	<i>81.1 lbs./day</i>	<i>1,334 lbs./day</i>
Orting	<i>74 lbs./day</i>	<i>24.5 lbs./day</i>	<i>40 lbs./day</i>
Pierce County ¹	<i>149 lbs./day</i>	<i>48.0 lbs./day</i>	<i>793 lbs./day</i>
Puyallup	<i>509 lbs./day</i>	<i>166.0 lbs./day</i>	<i>2, 733 lbs./day</i>
Rainier School WTP ²	<i>0 lbs./day</i>	<i>0 lbs./day</i>	<i>0 lbs./day</i>
South Prairie	<i>12 lbs./day</i>	<i>4.0 lbs./day</i>	<i>65 lbs./day</i>
Sumner	<i>267 lbs./day</i>	<i>867 lbs./day</i>	<i>1,428 lbs./day</i>
Wilkeson	<i>10 lbs./day</i>	<i>3.2 lbs./day</i>	<i>52 lbs./day</i>
CUGA Reserve ³	<i>281 lbs./day</i>	<i>92.4 lbs./day</i>	<i>1,520 lbs./day</i>
Totals	<i>1,835 lbs./day</i>	<i>600 lbs./day</i>	<i>9,875 lbs./day</i>

5. Conversion. All permitted dischargers may convert BOD5 allocations for ammonia allocations at a ratio of 13.4 to 1, provided that mixing zone and antidegradation requirements are met, that no increases

¹ For wastewater treatment provided at Sumner WWTP per 1984 Interlocal Agreement

² Rainier School did not request and did not receive an allocation from the Reserve.

³ The Comprehensive Urban Growth Area (CUGA) Reserve Account shall be held exclusively for population and employment growth which:

- occurs within the Puyallup River Watershed Boundary;
- occurs within an approved Pierce County CUGA;
- is not part of any city's approved UGA at the time of this agreement; and
- no public entity has committed to provide wastewater treatment at a specified POTW through an Ecology-approved General Sewer Plan per WAC 173-240-050.

The necessary and reasonable CUGA Reserve Account shall be transferred to the Reserve Account of the municipality that commits to providing treatment at a specified treatment facility in an Ecology-approved General Sewer Plan per WAC 173-240-050, which is consistent with the County Comprehensive Sewer General Plan.

in ammonia loading shall occur in the White River above river mile 3.6, and no increases in nonpoint or hatchery loads shall occur at critical conditions.

6. Industrial Reserve Account. There is hereby created an Industrial Reserve Account containing 5% of the TMDL Reserve to provide wastewater treatment necessary for the expansion of existing permitted industrial facilities or for new permitted industries which discharge directly into the River. This industrial Reserve allocation does not include industrial users which discharge through a municipal facility. The Industrial Reserve Account shall be managed by Ecology in accordance with the terms of this Agreement.

7. Water Quality Buffer. 5% of the TMDL Reserve capacity shall be set aside as a water quality buffer to demonstrate the Parties' commitment to water quality and habitat enhancement. This amount is in addition to the margin of safety used in the TMDL, and the Tribes' commitments to set aside 10% of the TMDL Reserve for fish habitat and water quality enhancement. This 5% will not be available for use for discharges into the River.

8. No Reserve Allocation to Existing Hatcheries. There shall be no allocation from the Reserve to the six fish hatcheries in the Puyallup River basin. The six existing fish hatcheries either are governed by a general permit or are small enough that they do not come under the general permit; they include two privately-owned facilities, two Washington Department of Fish and Wildlife facilities, a Muckleshoot Tribe facility and a Puyallup Tribe facility.

9. No Reserve Allocation for Background, Nonpoint or Stormwater. Because the 1994 TMDL attributed 49% of the BOD5 load and 5% of the ammonia load to background and nonpoint sources, there shall be no allocation of the TMDL Reserve for background, nonpoint or stormwater pollution.

10. Commitments to Address Nonpoint Pollution. Point sources receiving wasteload allocations from the Reserve have an obligation to control nonpoint loading of BOD5 and ammonia to the river within their jurisdictions. As a condition of accessing the Reserve allocation, the Parties receiving waste load allocations shall comply with applicable federal, tribal, state, and local nonpoint discharge regulations.

B. ACCESSING RESERVE ALLOCATIONS

1. Compliance With Technology Controls (AKART), Mixing Zone And Toxicity Requirements. All

Parties shall be required to comply with technology controls or AKART, mixing zone and toxicity requirements for BOD5 and ammonia to access their Reserve Allocation.

2. Compliance With Antidegradation Requirements. Parties requesting access to Reserve allocations

shall comply with applicable antidegradation provisions of State or Tribal law, including, but not limited to, compliance with point and nonpoint requirements and appropriate public participation in the decision-making process. The appropriate permitting authority for the requesting party shall make the antidegradation determination. Ecology's Water Quality Antidegradation Implementation Plan.

Preliminary Review Draft. January 1998, shall apply to all requests to access Reserve allocations unless or until the permitting authority or the authority supplying water quality certifications has developed revised antidegradation procedures. See Exhibit 5. The final antidegradation regulations which shall apply are those adopted by Ecology or a tribe and approved by EPA.

3. Municipal Reserve Account Access. A municipality shall initiate the process to access its Reserve

Account through the submittal of wastewater facility plan/engineering report in accordance with the provisions of Chapter 173-240 WAC. The engineering report will be required to be in conformance with an Ecology-approved general sewerage plan, which addresses the sewer service area under consideration. The facility plan/engineering report will include: a) a description of the currently approved TMDL allocation, b) an analysis of an application of AKART required under state law, c) a description of plant performance relative to the current NPDES permit; d) a description of the proposed changes which address the need for additional allocation, and e) the determination that the state and/or tribal nation antidegradation tests have been met. The primary basis for which use of the Reserve is possible for consideration is based on the population, employment, and related service area growth as determined under the provisions of the state's Growth Management Act, and subsequent planning documents, including the state-approved general sewerage plan. Ecology, in conjunction with other permitting authorities affected and authorized, may approve, conditionally approve, or reject access to the Reserve

Account based on the information provided in a proposal; any decision shall be in writing to the proposing Party or partnership of Parties submitting a request. Any Reserve allocation which is not used shall remain in the municipality's Reserve Account. Once a municipality has fully accessed its share of the Reserve, the Reserve Account for that municipality shall be closed unless supplemented through reallocation by amendment of this Agreement, if and when additional Reserve may be available.

4. Periodic Review of Municipal Reserve Accounts. Ecology shall review the actual growth experienced by a Municipality for the previous five-year period during the discharge permit renewal process. The purpose of the review shall not be to challenge a municipality's Reserve Account balance, but shall be to provide the regulatory agency and the municipality with an opportunity to compare the municipality's actual growth with its projected growth and to discuss whether or not revisions to the municipality's comprehensive land use plan are expected. This status will be assessed by the regulatory agencies and noted in the Fact Sheets for NPDES permit renewals.

5. Modification in Municipal Reserve Accounts. If a Municipality amends its comprehensive land use plan or revises its sewer plan to indicate earlier growth projections are unlikely to occur, its Municipal Reserve Account balance may be reduced. During the permit renewal process, adoption of such a revised plan shall trigger a review of the Municipality's Reserve Account balance in the permit renewal. If projected reduction in growth is significant, the Municipality's Reserve Account balance may be reduced. The portion of the Reserve Account which the permitting authority and the Municipality agree is no longer needed by the Municipality shall be returned to the Municipal Reserve Account at Ecology for reallocation to other municipalities, according to updated growth and employment projections at that time. Increases to Municipal Reserve Accounts shall be possible only if additional unallocated Reserve is available.

6. Industrial Reserve Account Access. The Industrial Reserve Account is set aside for industrial entities that are not part of tribal economic development activities and that do not discharge into municipal sewage treatment facilities. The Industrial Reserve Account shall only be accessed by Industrial entities applying for and receiving a point-source wastewater discharge permit from the

appropriate permitting authority. After completion of the antidegradation review process, the Reserve shall be accessed upon permit approval on a first come, first served basis. When the Industrial Reserve Account is completely accessed, the Industrial Reserve Account shall be closed or supplemented through reallocation by amendment of the Agreement, if and when additional unallocated Reserve may be available. An industrial entity may transfer the wasteload allocation that has been incorporated into its NPDES permit, which permit may include a portion of the Reserve, pursuant to applicable NPDES permit transfer regulations. Any discontinued allocation not transferred shall revert to the Industrial Reserve category administered by Ecology for potential reallocation amongst existing and future industrial users.

7. Administration of Reserve Accounts. Ecology shall administer the Reserve Accounts consistent with this Agreement.

C IMPLEMENTATION AND MONITORING

1. Communications Process. Ecology, on behalf of the Mediation Sponsors, shall confer with members of the Mediation Participants regularly to determine whether it is necessary to reconvene the Mediation Participants to review Agreement implementation and to share information regarding changes and developments within the Puyallup River Basin. Ecology's consultation shall be coordinated with Washington State's five-year watershed planning process.
2. Future Water Quality Standard Violations. If ambient monitoring indicates that ammonia or dissolved oxygen water quality standards are not being met, Ecology shall notify Mediation Participants and reconvene the Mediation Participants to identify the problem, review data and develop a joint strategy to protect water quality. Nothing in this paragraph shall be construed to prevent the appropriate regulatory authority from taking necessary action to immediately respond to noncompliances with water quality standards or effluent limitations.
3. Annual State of the Watershed. Ecology shall provide an annual report on the State of the Watershed. It will be based on data from the ambient monitoring program, monthly sampling reports

provided to Ecology by permitted dischargers in the basin, and descriptions of steps taken and financial resources devoted, as a result of this Agreement, to reducing nonpoint pollution.

4. Monitoring. Ecology and the Puyallup Tribe shall augment the existing monitoring system in the Puyallup and White Rivers to track BOD5, ammonia, and dissolved oxygen. Existing ambient stations are used to monitor water quality in the White and Puyallup Rivers at locations above the Puyallup Reservation boundary. The primary objectives of Ecology's ambient monitoring program are to assess spatial and temporal changes in water quality, determine if designated uses are supported by existing instream water quality, and provide site specific water quality information in support of Ecology's water quality based permitting of dischargers. The Puyallup Tribe, at its expense, will purchase, install and maintain two continuous monitoring units at designated sampling locations at a cost of approximately \$20,000. With the cooperation of Ecology, these stations will monitor pollutants, including BOD5, ammonia, salinity, and dissolved oxygen. The monitoring stations shall be installed no later than July 1, 1998. Sampling design methodology will be consistent with the Freshwater Ambient Water Quality Monitoring Final Quality Assurance Project Plan (Ecology, 1996) and distributed to Mediation Participants for review and comment prior to installation of the monitoring units. Ecology and the Puyallup Tribe shall present ambient monitoring data and violations of water quality standards for dissolved oxygen and ammonia in technical memoranda format. Technical memoranda shall be distributed to all Mediation Participants. Ambient monitoring data shall also be available on the internet. As part of its ambient monitoring program in the basin, Ecology will provide a rotating station at river mile 8 on the White River for 3 years to conduct seasonal sampling.

5. Monitoring Funding. The Municipal and Industrial point source dischargers shall collectively contribute \$6,000 annually to Ecology as their full share of the cost of the additional ambient monitoring of the Puyallup River between river mile 1 and river mile 5.8 set forth in Section III.C.4, in proportion to the Reserve allocation set forth in paragraph A.1.. The Municipal and Industrial point source dischargers shall contribute the following sums annually to Ecology as their share of the \$6,000 additional ambient monitoring cost:

Bonney Lake	\$583	Puyallup	\$1164
Buckley	\$458	South Prairie	\$293
Carbonado	\$281	Sumner	\$738
Enumclaw	\$707	Wilkeson	\$289
Orting	\$403	Industries	\$554
Pierce County	\$530		

D. EFFLUENT TRADING DEMONSTRATION PROJECT

1. Demonstration Project Established. EPA has provided funding in the form of grant funds to Ecology to establish and manage an effluent trading demonstration project in the Puyallup River basin to the extent authorized by existing laws.
2. Cooperative Effort. The Mediation Sponsors are committed to working with interested mediation Parties to develop an effluent trading demonstration project for the Puyallup River basin. The details of the effluent trading program will be developed, agreed to, and implemented in a separate collaborative process following ratification of this Agreement.
3. EPA Draft Framework for Watershed Based Trading. Development of the effluent trading demonstration project shall take into consideration guidelines in the "EPA Draft Framework for Watershed-Based Trading, EPA 800-R-96-001." Alternatives for establishing NPDES permit limits may include, but are not limited to, intra-plant trading, inter-plant trading (point source/point source), point source/nonpoint source trading, pretreatment trading, bubble limits and flow-based limits. The Memorandum from Ecology, dated March 20, 1997 regarding acceptable alternatives is attached hereto as Exhibit 10.

E. GENERAL PROVISIONS

1. Amendment. This Agreement may only be amended after a proposal to amend the Agreement has been submitted and agreed to by consensus of the Mediation Participants. In the event the Mediation Participants are unable to reach consensus, the Agreement may be modified by a consensus of the

Mediation Sponsors together with approval by 80% of the existing Mediation Participants, provided that any such modification can be vetoed by any county, municipality, tribe, Ecology or EPA included in this Agreement.

2. Assignment of Rights and Delegation of Duties. Neither this Agreement, nor any allocation acquired hereunder may be assigned, transferred or encumbered in whole or in part by operation of law or otherwise, without the appropriate permitting authority's prior consent, which consent shall not be unreasonably withheld, except that allocations may be transferred in accordance with the Effluent Trading program developed pursuant to Section III.D.

3. Termination. Unless extended by the Parties for a stated period, this Agreement shall terminate thirty years from the date of its final ratification except as provided for in Section E, paragraph 4, below.

4. Modification of Laws. In the event Ecology, the Puyallup tribe, the EPA, or the Muckleshoot Tribe if it is delegated a water quality standards program under the Clean Water Act, determine performance required by the Agreement violates or potentially violates a state, federal or tribal law, Ecology shall reconvene the Mediation Parties. The purpose will be to identify the issue and seek agreement from all Parties to amend the Agreement. Nothing in this Agreement shall be construed to prevent the appropriate regulatory authority from immediately taking any necessary action to comply with state, federal or tribal law.

5. Modification of Water Quality. In the event of an environmental change in the River, significantly affecting TMDL assumptions, including, but not limited to instream flow assumptions, Ecology shall reconvene the Mediation Parties, identify the change, identify the impact of the change on TMDL results, and seek agreement from all Parties to amend the Agreement.

6. New Parties. Entities which are not Parties to this Agreement, but which seek to access Reserve allocation, shall be required to agree to the terms set forth in this Agreement as a condition of accessing a Reserve allocation and shall thereafter become Mediation Parties with rights and obligations contained herein.

7. Dispute Resolution. In the event of a disagreement between any Parties regarding the interpretation or performance of this Agreement, the dissatisfied Party or Parties shall provide the Mediation Sponsors with written notice of the dispute and a request for negotiations: The Parties and the Mediation Sponsors shall meet and confer in order to attempt to resolve the dispute within 30 days of the written notice, or such time thereafter as is mutually agreed. If the Parties are unable to resolve the dispute within 60 days of such meeting, then each Party to this dispute shall submit a list of 5 proposed mediators. The Parties are encouraged to stipulate to a mediator. Each Party may nominate 1 or 2 mediators and strike 2 mediators from the list. If both Parties respond, a mediator nominated by both Parties will be appointed. If no mediator has been nominated by both Parties, a mediator shall be jointly selected by Ecology, EPA and the Puyallup Tribe, unless either of the disputing Parties is the Ecology, EPA or the Puyallup Tribe, in which case the remaining Mediation Sponsors will make the selection. The decision of the Mediators shall be final and binding on the Parties. If in mediation, each Party will bear its own costs; each Party, except for the EPA if it is one of the Parties, will equally share the costs of hiring a mediator. Use of the foregoing dispute resolution procedure shall be a condition precedent to commencement of any action in any County, State or Federal Court as concerning, the terms and conditions of this Agreement. Nothing in this Agreement shall be construed to restrict the regulatory authority from taking immediate enforcement action, including an action in federal, state, or tribal court, against any Party who violates federal, state, or tribal law. This paragraph does not apply to any action by Ecology that is within the jurisdiction of the Pollution Control Hearings Board. This paragraph does not apply to any action by EPA that is within the jurisdiction of the Environmental Appeals Board or for which an administrative appeal mechanism is already established.

8. Release. The Parties do hereby mutually release and discharge every other Party and all past and present principals, agents, insurers and representatives thereof, from all present claims, disputes, suits or liability of any kind, character or nature whatsoever, known or reasonably ascertainable, fixed or contingent arising out of this Agreement which any party may have against any other party. The Parties do hereby relinquish any and all claims for Reserve allocation aside from those established by this

Agreement. Nothing in this paragraph shall limit the ability of any appropriate regulatory authority to take any enforcement action. for any past, present, or future violations of Chapter 90.48 RCW, the federal Clean Water Act, or any discharge permit

9. Not an Admission of Legal Entitlement. This Agreement represents a compromise, in which Parties agree to release claims to the TMDL Reserve in return for a certain Reserve allocation and the ability to minimize the scope and cost of dispute resolution. The Parties voluntarily relinquish any and all claims to Reserve allocation beyond those allocations set forth in this Agreement and covenant not to sue each other regarding the terms and the allocations set forth in this Agreement. However, ratification of this Agreement shall not be construed or act as an admission by any Party that its rights are limited to the agreed upon allocation of Reserve if an allocation is challenged by a party who is not a Party to this Agreement. Nor shall anything in this Agreement be construed or act as a limitation on the appropriate regulatory authority's ability to implement or enforce state, federal, and, if applicable, tribal, discharge permit programs.

10. Covenant Not to Sue. Each Party covenants that it will never hereafter, individually or in a representative capacity, institute or maintain any action at law or in equity against or on account of any claim released herein. Nothing in this paragraph shall limit the ability of any appropriate regulatory authority to take any enforcement action for any past, present, or future violations of Chapter 90.48 RCW, the federal Clean Water Act, or any discharge permit.

11. Waiver. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Agreement.

12. Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement.

13. Interpretation. This Agreement has been submitted to the scrutiny of all Parties hereto and their counsel, if desired, and shall be given a fair and reasonable interpretation in accordance with the words

hereof, without consideration or weight being given to its having been drafted by any party hereto or its counsel.

14. Severability. If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

15. Authority. Representatives signing this Agreement certify that they are fully authorized by the Party whom they represent to enter into the terms and conditions of this Agreement and legally to bind such Party thereto.

16. This Agreement may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument. All counterparts together will constitute one and the same Agreement.

IV. EXHIBITS

1. Glossary of Terms
2. Committee Charter
3. Excerpts from the Addendum to the Puyallup River Total Maximum Daily Load for Biochemical Oxygen Demand, Ammonia, and Residual Chlorine, by Greg Pelletier, July 1994, pp. 1-13 and Table 9.
4. Water Quality Antidegradation Implementation Plan. Preliminary Review Draft. January 1998.
5. List of NPDES Permit Holders in the Puyallup River Watershed
6. Intergovernmental Agreement Among the Puyallup Tribe of Indians, the Washington State Department of Ecology, and the United States Environmental Protection Agency, January 1997.
7. "Statement of the Basis for an Allocation to the Puyallup Indian Tribe of a Portion of the BOD and Ammonia Wasteload Reserve Identified in the 1994 TMDL for the Puyallup River
8. Muckleshoot Indian Tribal Council Resolution Number 97-353, October 3rd, 1997, To Authorize Requesting 20% Of The Determined Reserve For BOD And Ammonia Identified In A TMDL Study For The White River.
9. Memorandum from Ecology, dated March 20, 1997, to the Puyallup River Mediation Committee concerning Alternatives